LOY CHIN ASSOC. PTE. LTD.

v.

AUTOHOUSE TRADING PTE. LTD.

HIGH COURT, SINGAPORE
CHAO HICK TIN J
[DISTRICT COURT APPEAL NO. 7 OF 1989]
27 APRIL 1991

CONTRACT: *Whether oral contract - Burden of proof - Whether works carried out on basis of contract or for the purpose of demonstrating capabilities - Words used in correspondence - Negotiations and discussions - Satisfactory evidence - Quantum meruit - Not pleaded - Prejudice - Party bound by pleadings.*

The appellants were design and advertising consultants who allege that by way of an oral contract, they agreed to design and prepare a publicity brochure and logo/logotype designs for the respondents estimated at $60,000. The appellants further alleged that the respondents wrongfully refused to allow them to complete the works and that therefore they had repudiated the said contract.

The appellants claimed a sum of $36,000 for work done and material supplied and also for damages for loss of profit which they would otherwise had made if they had been allowed to complete the work.

The respondents denied the existence of the oral contract and submitted that the appellants carried out the works voluntarily and at their own expense for the purpose of demonstrating that they were capable of producing the advertising material.

The District Court dismissed the appellant's action. This was the appeal by the appellants.

Held:

[1] There was nothing from the evidence to suggest that the respondents had engaged or commissioned the appellants to undertake the tasks alleged. It would seem that the parties were still at the exploratory stage. There was no commitment and there certainly was no agreement on any price.

[2] The situation on 6 March 1985 was not different as the use of these words in the letter of 8 March 1985 "Professional charge could be reduced **when** this assignment (that is, on logo logotype) is undertaken in conjunction with the design of the brochure" would again seem to suggest that nothing had been firmed up; not even the design and printing of the brochure. Furthermore, the words **"expected** to be $5 per unit cost" in the letter of 8 March 1985 were again suggestive of something under negotiation.

[3] There was no basis on which to disagree with the District Judge's conclusion that L's evidence was unsatisfactory and unreliable.

[4] A party is bound by his pleadings and his case is confined to the issues raised on the pleadings. There was nothing in the re-amended statement of claim to suggest that the appellants were suing on *quantum meruit*; the entire action was based on an alleged oral contract. The appellant cannot be given leave to further amend the re-amended statement of claim to include an alternative claim based on *quantum meruit* at such a late stage as it would clearly prejudice the respondents to an irreparable extent. As the respondents had

elected not to call any evidence, it was not open to the Court to make any ruling or comment on the claim for any work done on the basis of *quantum meruit*, without hearing the other side of the story.

[Appellants' appeal dismissed.]

Cases referred to:

Blay v. Pollard & Morris [1930] 1 KB 628 ***(foll)***
Brewer Street Investments Ltd. v. Barclays Wollen Co. Ltd. [1954] 1 QB 428 ***(cit)***
Janagi v. Ong Boon Kiat [1971] 2 MLJ 196 ***(foll)***
London Passenger Transport Board v. Moscrop [1942] 1 All ER 97 ***(foll)***
William Lacey (Hounslow) Ltd. v. Davis [1957] 2 All ER 712 ***(cit)***

For the plaintiffs/appellants - Michael Khoo
For the defendants/respondents - Tan Lay Sang

JUDGMENT

Chao Hick Tin J:

This was an appeal from a decision of a District Court which dismissed an action instituted by the plaintiffs/appellants against the defendants/respondents for payment under a contract for service. After hearing the parties I dismissed the appeal and now give my reasons.

The appellants were design and advertising consultants. In their re-amended statement of claim the appellants averted that "on or about 27 February, by way of an oral contract, and culminating in a project situation report on 6 March 1985, the (appellants) agreed to design and prepare a Potex publicity brochure and logo/logotype designs for the respondents estimated at the sum of $60,000." The appellants said that following that oral agreement, the appellants commenced work and expended much labour and material thereon. On or about 12 March 1985 the respondents wrongfully "refused to allow the (appellants) to continue to prepare or complete the said brochures and designs and wholly repudiated and put to an end the said contract." The appellants claimed $36,000 for "work done and material supplied," with particulars furnished, and also for damages for loss of profit which they would otherwise had made if they had been allowed to complete the work. Accordingly, the appellants prayed for these reliefs:

1. Payment of the said sum of $36,000 for work done and material supplied;
2. Damages for breach and repudiation of contract; and
3. Costs.

In their amended defence, the respondents denied that there was any oral contract between themselves and the appellants. The respondents further contended that the works were "carried out by the (appellants) voluntarily and at their own expense purportedly for the purpose of demonstrating to the respondents that the (appellants) were capable of producing the advertising- material."

On the pleadings, the first question which must be determined was whether there was an oral contract between the parties on 27 February 1985. The appellants called only one witness - one Loy Chin Ah Loy hereinafter called "Loy Chin"), the appellants' chief executive. At the close of the appellants' case, the respondents submitted that there was no case to answer, which submission was upheld by the learned district Judge. The Court below held that the appellants had not discharged the burden on them to establish their claim that there was a contract existing between them and the respondents on 27 February or 6 May 1985.

In his evidence Loy Chin said that on or about 27 February 1985 the appellants were requested by the respondents to design and produce a Potex Publicity Brochure and logotype design. He claimed that before this date the appellants and the respondents had business dealings. Loy Chin said that on that day he met one, Angela Lee, and another, Mathew Chan, at the respondents' premises, who made the request. Both informed Loy Chin that the respondents required the works to be done urgently. He said that they did discuss about price generally.

From the agreed bundle I noted that it was only on 29 January 1985 that the appellants introduced themselves to the respondents by way of a telephone conversation. This was followed by a letter dated 30 January 1985 wherein the appellants set out in brief their experience in the advertising and creative fields. There was a meeting on 1 February 1985 between Loy Chin and Angela Lee of the appellants and Connie Lim of the respondents. A presentation was made by Loy Chin and Angela Lee to Connie Lim on 12 February 1985. On that day certain designs were also forwarded by Loy Chin to Connie Lim for the respondents' retention (record of appeal p. 79). The letter concluded in these words:

> As explained, we would be available to present the abovementioned to your other management personally by our Mr. Loy Chin again, if required. Thank you for your interest in us.

It would appear that nothing transpired until 27 February 1985 when there was a meeting between Connie Lim and Mathew Chan of the respondents and Loy Chin and Angela Lee of the appellants. This meeting was recorded in a letter dated 4 March 1985 from the appellants to the respondents (record of appeal p. 80). In the letter the appellants stated:

> As instructed, Mr. Loy Chin and our Creative Department have already proceeded with the following design/visuals for the next presentation to clients expected to be 7 or 8 March 1985,

and then went on to set out various aspects of work which the appellants would proceed to do.

The presentation was brought forward and carried out on 6 March 1985. This was followed by a letter of 8 March 1985 (record of appeal p. 82) from the appellants to the respondents which began as follows:

> *Re Potex Publicity Brochure and related matters*
>
> Thank you for inviting us again to your office on 6 March 1985 with **the possibility of engaging our services** for the abovementioned .... and as usual, please find below the project situation report-to-date ... (emphasis added).

The letter also stated that the appellants would expect to "make a preliminary photographic survey of your Potex factory on 9 March 1985, Saturday to document more information on the range of Potex sanitary ware." It then went on to quote the sum of $5 per unit cost (qualified by the words "expected to be") for 10,000 copies of the Potex publicity brochure, inclusive of artwork, photography, printing and all necessary works to produce the brochure.

The letter ended with these two paragraphs on Potex logo design:

> *7. Potex Logo Design*
>
> Agency was instructed to design a new Potex Logo and Logotype. Client indicated that it must be a sophisticated graphic interpretation of what Potex sanitary wares are
>
> When asked about the professional charges, Agency (that is, appellants) **indicated** that our **usual** charge is $5,000. However, in conjunction with this publicity brochure, we would be happy to reduce the cost accordingly, depending on the amount of work involved.

a *8. Potex Logo & Logotype Quotation*

> Cost for design and production of one Potex Logo with logotype, inclusive of photoprint, compugraphic typesetting, colour scheme indication and various designs, together with research on pamphlets and brochures of other similar products, for the purpose of explaining to client its design motif relevance: $5,000. Professional charge could be reduced **when this assignment is undertaken in conjunction with the design of the brochure.** (emphasis added)

b The critical averment in the re-amended statement of claim of the appellants was that on 27 February 1985 there was an oral agreement for the appellants to undertake the tasks relating to the Potex publicity brochure and the design of the Potex logo and logotype for an estimated sum of $60,000. The letter of 4 March 1985 which recorded the meeting of 27 February 1985 did not support that contention at all: there was nothing to suggest that the respondents had engaged/commissioned the appellants to undertake the tasks. It seemed to *c* indicate that the parties were still at an exploratory stage. There was no commitment and there certainly was no agreement on any price. Even taking the evidence of Loy Chin, only some prices were mentioned but that was all. As the re-amended statement of claim was based on an alleged oral agreement of 27 February 1985, the action must accordingly fail.

Even if one were to look at the situation on 6 March 1985, I am afraid the position was no *d* better. Firstly, the appellants in their letter of 8 March 1985 (quoted above) referred to "the possibility of engaging our services." Loy Chin tried to explain that the word "possibility" only concerned "related matters" and not the Potex publicity brochure. Like the learned district Judge, I found this explanation unacceptable as it sought to draw a distinction not warranted at all by the letter. Secondly, the use of these words in the letter of 8 March 1985 "Professional charge could be reduced **when** this assignment (that is, on logo and logotype) is undertaken *e* in conjunction with the design of the brochure," would again seem to suggest that nothing had been firmed up; not even the design and printing of the brochure. If there had been a firm commitment on the brochure, I would have expected the appellants to say something like this "as this assignment is related to the job on the brochure which we are now engaged to design/produce for you, we would be prepared to reduce our professional charges etc." Thirdly, I would say that the words **"expected** to be $5 per unit cost" in the letter of 8 March *f* 1985 were again suggestive of something under negotiation.

Therefore, in my judgment, even as of 6 March 1985 there was no evidence of a concluded contract between the appellants and the respondents covering the design and printing of the Potex publicity brochure and the design of the logo and logotype for an estimated sum of $60,000. To my mind the situation then was still unsettled: the parties were still discussing. Finally, it is not without significance that even as late as on 11 March 1985 the appellant *g* wrote in these terms:

> *4 Complete Package Deal Production Cost*
>
> Inclusive of : Design and Finish Artworks, Photography
>
> : Printing and related colour separations
>
> *h* : Potex Logo and Logotype Designs
>
> As explained and stated in our 8 March 1985 letter, **we would be happy to quote** your management a total package deal in this project. (Emphasis added).

Loy Chin tried to explain these words in his re-examination but in my opinion I did not think his explanation had helped to advance their case:

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Q: The words "we would be happy to quote your management," doesn't that mean the matter was still under negotiation?

A: Not true, it was verbally discussed.

By no stretch of the imagination could a discussion amount to a commitment or a contract.

The learned district Judge had heard the evidence and had in his grounds of decision fully analysed the evidence. There is really no basis for me to disagree with his conclusion that Loy Chin's evidence was unsatisfactory and unreliable. Indeed, I agree with him.

In the Court below the appellants' Counsel (who was different from Counsel arguing the appeal) in replying to the respondents' submission of no case to answer asked for a sum amounting to 60% of $60,000 on the basis of *quantum meruit*. The respondents' Counsel objected to the claim on *quantum meruit*. He contended that that cause of action was never pleaded. The case as pleaded was based on the oral contract of 27 February 1985 at an estimated price of $60,000. He stressed that he might not have adopted the approach of submitting no case to answer if the claim was based on *quantum meruit*. Before me, Counsel for the appellants had also raised this point. But I am afraid this submission must fail.

A party is bound by his pleadings and his case is confined to the issues raised on the pleadings: see *London Passenger Transport Board v. Moscrop* [1942] 1 All ER 97 at 105 per Lord Russell. I would also rely on this passage of Scrutton LJ in *Blay v. Pollard & Morris* [1930] 1 KB 628 at 634:

> Cases must be decided on the issues on record; and if it is desired to raise other issues they must be placed on the record by amendment. In the present case the issue on which the Judge decided was raised by himself without amending the pleadings and in my opinion he was not entitled to take such a course.

Equally pertinent is the statement of Sharma J in *Janagi v. Ong Boon Kiat* [1971] 2 MLJ 196:

> It is on the examination of the pleadings that the Court notices the differences which exist between the contentions of the parties to the action. In other words the matters on which the parties are at issue are determinable by an examination of the pleadings. An issue arises when a material proposition of law or fact is affirmed by one party and denied by the other. The Court is not entitled to decide a suit on a matter on which no issue has been raised by the parties. It is not the duty of the Court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point.

There was nothing in the re-amended statement of claim to suggest that the appellants were suing on *quantum meruit*. Counsel for the appellants submitted that the first relief prayed for work done and material supplied was in *quantum meruit*. I did not think that was correct. As formulated in the re-amended statement of claim, the entire action was based on the alleged contract, which the trial Judge found never existed.

Counsel for the appellants then sought my leave to further amend the re-amended statement of claim to include an alternative claim based on *quantum meruit*. I had to disallow the amendment made at such a late stage as it would clearly prejudice the respondents to an irreparable extent. Obviously the respondents had made a submission of no case to answer (without calling any evidence) in accordance with the pleadings. I accepted the respondents' Counsel's contention that had the claim for *quantum meruit* been pleaded in the alternative the respondents would have taken another approach.

The question of whether there would have been any ground for the appellants to make a claim for any work done on the basis of *quantum meruit* was not before the learned district Judge; neither was it before me. There are, of course, authorities to suggest that where a

defendant requests a plaintiff to perform services in anticipation of a contract which does not materialise, there may be quasi-contractual liability on the defendant's part to pay *quantum meruit*: see *William Lacey (Hounslow) Ltd. v. Davis* [1957] 2 All ER 712 and *Brewer Street Investments Ltd. v. Barclays Wollen Co. Ltd.* [1954] 1 QB 428. In view of the course the trial had taken with the respondents electing not to call any evidence, it was certainly not open to me to make any ruling or comment on that question without hearing the other side of the story. This, in essence, was the reason why the amendment sought by the appellants had to be disallowed.

Also found at [1991] 3 CLJ 1954